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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,292	09/12/2003	Harrison Robert Murphy	2138.001B	7437

23405 7590 06/27/2005

HESLIN ROTHENBERG FARLEY & MESITI PC  
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ALBANY, NY 12203

EXAMINER
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CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/661,292

Applicant(s)

MURPHY ET AL.

Examiner

FREDRICK C. CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3,21-26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,21-26 and 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 21-22, 25, and 28-34 are rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Pat. No. 4,504,991 to Klancnik in view of U.S. Pat. No. 4,762,750 to Girgis et al.

Claims 3 and 33, Klancnik discloses an open flame resistant mattress comprising a fire barrier at least partially enclosing a core 75 of said mattress, said fire barrier comprising a fire barrier layer 22 of neoprene foam and backing 24 of fiberglass and a thermally insulating layer 26. With regards to the fire barrier layer and thermally insulating layer independently comprising at least one char-forming flame-retardant fiber, Applicant discloses in the specification that fiberglass is a char forming flame resistant material. Therefore, combo-layer 22/24 meets the limitations of char-forming flame retardant fiber. Klancnik fails to disclose the fire barrier layer comprising a fabric/textile. Girgis discloses fibers strands and yarns used in textile applications (col. 1 lines 14-46). It would have been obvious to employ the textile applications as taught by Girgis in order to improve the flame retardant material used in the mattress of Klancnik while taking advantage of the non-flamability and stability. Klancnik also fails to disclose the mattress resisting an open flame under conditions of California TB 603.

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It would have been obvious for one having ordinary skill in the art at the time of the invention to have the mattress resist an open flame under conditions of California TB 603 in order to for the mattress of Klancnick to meet the standards for mattresses sold in the State of California as of January 1, 2004.

Claims 21-22 and 25, wherein said at least one flame-retardant fiber is fiberglass.

Claims 28, 31-32, and 34, Kancnik discloses an open flame resistant mattress comprising a fire barrier at least partially enclosing a core 75 of said mattress, said fire barrier comprising a fire barrier layer 22 of neoprene foam and backing 24 of fiberglass and a thermally insulating layer 26. With regards to the fire barrier layer and thermally insulating layer independently comprising at least one char-forming flame-retardant fiber, Applicant discloses in the specification that fiberglass is a char forming flame resistant material. Therefore, combo-layer 22/24 meets the limitations of char-forming flame retardant fiber. Klancnik fails to disclose the fire barrier layer comprising a fabric/textile. Girgis discloses fibers strands and yarns used in textile applications (col. 1 lines 14-46). It would have been obvious to employ the textile applications as taught by Girgis in order to improve the flame retardant material used in the mattress of Klancnik while taking advantage of the non- flamability and stability. Klancnick also fails to disclose the mattress resisting an open flame under conditions of California TB 117. It would have been obvious for one having ordinary skill in the art at the time of the invention to have the mattress resist an open flame under conditions of California TB 117 in order for the mattress of Klancnick to meet the standards for institutional mattresses sold in the State of California.

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Claims 29-30, wherein the article is selected from a mattress.

Claims 23-24, 26, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,504,991 to Klancnik in view of U.S. Pat. No. 4,762,750 to Girgis et al., and U.S. Pat. No. 6,410,140 to Land et al.

Claim 23-24, 26, and 35, Klancnik discloses all of the Applicant's claimed limitations except for the at least one flame-retardant fiber comprising para-aramid fibers and a blend of flame-retardant viscose and modacrylic fibers. Land discloses one flame-retardant fiber comprising para-aramid fibers (col. 4 lines 46-47)(col. 5 lines 24-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the material as taught by Land with the mattress of Klancnik in order to provide a fire resistant fabric having a feel and surface characteristic of upholstered fabrics.

***Response to Arguments***

Applicant's arguments filed 4/11/05 have been fully considered but they are not persuasive.

Contrary to the Applicant's arguments, Klancnik discloses a composite formed of a two layered material, made up of a flame retardant material that forms a char when exposed to fire and a layer of high tensile strength material. The composite is made up of a neoprene foam bonded to a fiberglass fabric. Girgis discloses flame retardant fibers strands and yarns used in textile applications (col. 1 lines 14-46). The combination as a whole would suggest to one having ordinary skill in the art is a mattress formed of a two layered material including a flame retardant textile layer bonded to a fiber glass fabric layer. Furthermore, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC  


  
**ALISON PICKARD**  
**PRIMARY EXAMINER**